

1  
2  
3  
4  
5  
6  
7 ANTHONY MORENO,

Plaintiff,

8 v.

9 MARTIN O'MALLEY,<sup>1</sup>  
10 Commissioner of Social Security,

11 Defendant.

12 Case No. 20-cv-05608-BLF

13  
14  
15  
16  
17  
18  
19  
20  
**ORDER GRANTING MOTION  
FOR ATTORNEYS' FEES UNDER  
42 U.S.C. § 406(b)**

21 [Re: ECF 28]

22 Plaintiff Anthony Moreno's counsel ("Counsel") moves for an award of attorneys' fees  
pursuant to 42 U.S.C. § 406(b) following Plaintiff's successful appeal of the denial of Social  
Security benefits. *See Mot.*, ECF 28. Counsel seeks attorneys' fees in the amount of \$23,000 on a  
past-due benefits award of \$138,772. *See id.* The Government has filed a response identifying the  
factors to be considered by the Court in evaluating Counsel's motion, and declining to take a  
position on the motion. *See Response*, ECF 30. The Court previously determined that Counsel's  
motion is appropriate for decision without oral argument and vacated the hearing noticed for  
August 8, 2024. *See Order*, ECF 32.

23 Counsel's motion for \$23,000 in attorneys' fees is GRANTED as discussed below.

24  
25  
26  
**I. BACKGROUND**27 Plaintiff filed this action on August 12, 2020, seeking review of the denial of his  
application for Disability Insurance Benefits. *See Compl.*, ECF 1. The Court granted in part and  
denied in part Plaintiff's motion for summary judgment, denied Defendant's cross-motion for  
summary judgment, reversed the denial of benefits, and remanded for further administrative28  
29

---

<sup>1</sup> Martin O'Malley is now the Commissioner of Social Security and is substituted in place of former Acting Commissioner Kilolo Kijakazi as Defendant in this suit. *See Fed. R. Civ. P. 25(d).*

1 proceedings. *See Order*, ECF 24. Plaintiff obtained a favorable result on remand, obtaining an  
2 award of past-due benefits in the amount of \$138,772. *See Notice of Award*, ECF 28-3.

3 Counsel represented Plaintiff pursuant to a written contingent-fee agreement, under which  
4 Counsel is entitled to attorneys' fees in an amount not greater than 25% of any past-due benefits  
5 awarded to Plaintiff. *See Attorney's Fee Contract*, ECF 28-4. As is standard, the Social Security  
6 Administration withheld 25% of the \$138,772 past-due benefits award, or \$34,693, to pay any  
7 attorneys' fees that might be owed. *See Notice of Award* at 3. Counsel does not seek the full  
8 amount of attorneys' fees withheld by the Social Security Administration; he seeks \$23,000,  
9 which is approximately 16.5% of the \$138,772 benefits award.

10 **II. LEGAL STANDARD**

11 Under 42 U.S.C. § 406(b), a court entering judgment in favor of a Social Security claimant  
12 who was represented by an attorney "may determine and allow as part of its judgment a reasonable  
13 fee for such representation, not in excess of 25 percent of the total of the past-due benefits to  
14 which the claimant is entitled by reason of such judgment[.]" 42 U.S.C. § 406(b)(1)(A). "[T]he fee  
15 is paid by the claimant out of the past-due benefits awarded; the losing party is not responsible for  
16 payment." *Crawford v. Astrue*, 586 F.3d 1142, 1147 (9th Cir. 2009).

17 Attorneys specializing in social security work "routinely enter into contingent-fee  
18 agreements specifying that the fee will be 25% of any past-due benefits recovered, thus providing  
19 the attorney the statutory maximum of fees if the representation is successful." *Crawford*, 586  
20 F.3d at 1147. The district court must conduct a "review of such arrangements as an independent  
21 check, to assure that they yield reasonable results in particular cases." *Gisbrecht v. Barnhart*, 535  
22 U.S. 789, 807 (2002). "The court may properly reduce the fee for substandard performance, delay,  
23 or benefits that are not in proportion to the time spent on the case." *Crawford*, 586 F.3d at 1151.  
24 The district court does not apply the lodestar method, but may consider a lodestar calculation as an  
25 aid in assessing the reasonableness of the requested attorneys' fees. *See id.*

26 Where attorneys' fees have been paid by the Government under the Equal Access to  
27 Justice Act ("EAJA"), 28 U.S.C. § 2412, the EAJA fees must be offset against any fees awarded  
28 under § 406(b). *See Gisbrecht*, 535 U.S. at 796. "Under EAJA, a party prevailing against the

1 United States in court, including a successful Social Security benefits claimant, may be awarded  
2 fees payable by the United States if the Government's position in the litigation was not  
3 "substantially justified." *Id.* (quoting 28 U.S.C. § 2412). Fee awards may be made under both  
4 EAJA and § 406(b), but the claimant's attorney must refund to the claimant the amount of the  
5 smaller fee award. *See id.*

6 **III. DISCUSSION**

7 This Court has no difficulty concluding that Counsel's request for attorneys' fees in the  
8 amount of \$23,000 is reasonable. The requested fees, which are approximately 16.5% of the past-  
9 due benefits recovered by Plaintiff, are significantly lower than the 25% of the past-due benefits  
10 bargained for in the contingent-fee agreement. Counsel obtained a favorable benefits award,  
11 resulting in Plaintiff's recovery of past-due benefits in the amount of \$138,772. Nothing in the  
12 record suggests that Counsel's performance was substandard. Counsel represents that he spent  
13 20.85 hours on the case. An award of \$23,000 would result in an effective hourly rate of \$1,103.  
14 Other district courts in the Ninth Circuit have approved attorneys' fees awards resulting in similar  
15 or higher effective hourly rates. *See Brazile v. Comm'r of Soc. Sec.*, No. C18-5914JLR, 2022 WL  
16 503779, at \*3 (W.D. Wash. Feb. 18, 2022) ("[F]ee awards with hourly rates exceeding \$1,000  
17 have been approved by courts in this district on numerous occasions."); *Harrell v. Berryhill*, No.  
18 16-CV-02428-TSH, 2018 WL 4616735, at \*4 (N.D. Cal. Sept. 24, 2018) ("[T]he Court finds the  
19 de facto hourly rate of \$1,213.83 is reasonable under *Gisbrecht*").

20 Counsel previously was awarded EAJA fees in the amount of \$4,241.23. *See Stip. and*  
21 *Order*, ECF 27. Counsel acknowledges that the EAJA fees must be offset against the award of fees  
22 under § 406(b), and represents that he will refund that amount to Plaintiff.

23 **IV. ORDER**

24 (1) Counsel's motion for \$23,000 in attorneys' fees under § 406(b) is GRANTED; and  
25 (2) Counsel SHALL refund to Plaintiff \$4,241.23 in EAJA fees previously awarded.

26 Dated: September 6, 2024

  
BETH LABSON FREEMAN  
United States District Judge